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SERVICE DATE – LATE RELEASE JUNE 30, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-290 (Sub-No. 260X)<sup>1</sup>

TENNESSEE RAILWAY COMPANY—ABANDONMENT EXEMPTION—  
IN SCOTT COUNTY, TN

STB Docket No. AB-290 (Sub-No. 259X)

TENNESSEE RAILWAY COMPANY—ABANDONMENT EXEMPTION—  
IN ANDERSON AND CAMPBELL COUNTIES, TN

IN THE MATTER OF AN OFFER OF FINANCIAL ASSISTANCE

Decided: June 30, 2005

By petition filed on February 28, 2005, in STB Docket No. AB-290 (Sub-No. 260X), Tennessee Railway Company (TNR), a wholly owned subsidiary of Norfolk Southern Railway Company (NSR), sought an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon an approximately 27.01-mile line of railroad between milepost TE-0.95 near Oneida, and milepost TE-27.96 near Nick's Creek, in Scott County, TN (the northern segment). Notice of the filing was served and published in the Federal Register on March 18, 2005 (70 FR 13231). In a decision served June 17, 2005, the petition for exemption was granted, subject to environmental, public use, trail use, and standard employee protective conditions.

The line involved in STB Docket No. AB-290 (Sub-No. 260X) is part of a 42-mile railroad line that extends from Oneida to Devonia, TN. On December 30, 2004, in STB Docket No. AB-290 (Sub-No. 259X), TNR filed a notice of exemption to abandon the line between Nick's Creek (milepost TE-27.96) and Devonia (milepost TE-42.00) (the southern segment). Notice of the exemption was served and published in the Federal Register on January 19, 2005. On May 20, 2005, National Coal Corporation (NCC) timely filed an offer of financial assistance (OFA) to purchase the 14.04-mile southern segment. By decision served on May 25, 2005, NCC was found to be financially responsible and the effective date of the abandonment exemption was

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<sup>1</sup> These proceedings are not consolidated, but are factually related. A single decision is being issued for administrative convenience.

postponed pending resolution of the OFA process. In a decision served on June 17, 2005, in STB Docket No. AB-290 (Sub-No. 260X), the Board held the OFA process in STB Docket No. AB-290 (Sub-No. 259X) in abeyance to afford NCC (or any other interested party) the opportunity to file an OFA to acquire the northern segment.

On June 27, 2005, NCC timely filed an OFA under 49 U.S.C. 10904 and 49 CFR 1152.27(c) to purchase the northern segment for \$903,558, consisting of \$331,900 for real estate and \$571,658 for the net salvage value of the rail assets on the line.

An OFA to acquire a line for continued rail service need not be detailed, but an offeror must show that it is financially responsible and that the offer is reasonable. See Conrail Abandonments Under NERSA, 365 I.C.C. 472 (1981). As evidence of its financial responsibility, NCC incorporates by reference the information it submitted with its OFA to purchase the southern segment in STB Docket No. AB-290 (Sub-No. 259X) and states that the transaction here is clearly within NCC's financial capabilities. On the basis of that information, NCC is similarly found to be financially responsible here.

NSR's appraisal values the land at \$331,900 and the net salvage value of track and materials at \$1,936,334. NCC accepts NSR's land value and calculation of the quantities of rail and track materials and the number and salvage value of crossties. However, NCC disagrees with NSR's estimated net liquidation value. In its OFA, NCC relies on an analysis prepared by an engineer, estimating the net liquidation value at \$571,658. Consistent with 49 U.S.C. 10904(c) and 49 CFR 1152.27(c)(1)(ii)(C), NCC has explained the basis for the difference between its lower estimate for the value of the line and the carrier's estimated value of the line.

Because NCC is financially responsible and has offered assistance, the effective date of the exemption authorizing the abandonment will be postponed.

The Board's regulations contemplate that the carrier and a financially responsible person will reach an agreement setting terms and conditions of purchase, but if they do not, either party may request the Board to do so. 49 CFR 1152.27(g). As the Board stated in the decision served on June 17, 2005, the OFA process will proceed concurrently for the purchase of both the northern and southern segments. Consistent with that, parties may negotiate regarding both segments for a period of 30 days from the June 27, 2005 filing by NCC of its OFA for the northern segment (i.e., until July 27, 2005), at which point any request to set the terms for either or both segments of the line will be due. Any person filing a request to set terms and conditions must pay the requisite filing fee, set forth at 49 CFR 1002.2(f)(26), which currently is \$18,400. An original and 10 copies of the request should be submitted along with the fee, in an envelope bearing the docket numbers of these proceedings, along with the words "Attention: Request to Set Terms and Conditions" in the lower left hand corner.

Appeals to this decision are governed by 49 CFR 1011.2(a)(7). Any appeal must be filed within 10 days of the service date of this decision and will be heard by the entire Board.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The effective date of the exemption is postponed to permit the OFA process under 49 U.S.C. 10904 and 49 CFR 1152.27 to proceed.
2. If NCC and TNR cannot agree on the purchase price, either party may request the Board to establish the terms and conditions of the purchase price on or before July 27, 2005. If no agreement is reached and no request is submitted by that date, the Board will serve a decision vacating this decision and allowing the abandonment exemptions to become effective.
3. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams  
Secretary